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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL CASSON BAILEY, TIMOTHY WILLIAM BANKS,
IAN GEOFFREY REDDING, and DENNIS J. ZIMMER

Appeal 2010-002519
Application 09/628,367
Technology Center 2100

Before MAHSHID D. SAADAT, ERIC. S. FRAHM, and
JASON V. MORGAN, *Administrative Patent Judges*.

MORGAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Introduction

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's non-final rejection of claims 1 – 6, 9, and 10. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Invention

The invention relates to relates to the provision of preinitialized environments to support multiple programs executing in a computer system with a reduction in program task initialization time. Spec. 1.

Exemplary Claim

1. A method for progressively improving a fit of a pool of reusable environments to requirements of programs in a computer system, the method comprising steps of:
 - providing a first environment for a first program;
 - responsive to initiation of a second program, making a determination whether creation of a new environment is a best response;
 - responsive to a determination that creation of a new environment is a best response, creating a new environment for the second program;
 - responsive to a determination that creating a new environment is not a best response, testing the pool for a best fit environment; and
 - adding elements to the best fit environment to match requirements of the second program, unless the best fit environment already matches the requirements of the second program.

*Evidence and Rejection*¹

The Examiner rejects claims 1 – 6, 9, and 10 under 35 U.S.C. § 103(a) as being unpatentable over Curtis (US 5,896,531) and Yokote (US 6,105,074). Ans. 4 – 6.

ISSUE

Did the Examiner err in finding that the combination of Curtis and Yokote teaches or suggests all of the disputed recitations of claims 1, 5, and 6?

ANALYSIS

The Examiner relies on Curtis to teach or suggest most of the recitations of claim 1, including: (1) making a determination whether creation of a new environment is a best response, (2) creating a new environment for a second program, and (3) testing a pool of reusable environments for a best fit environment. *See* Ans. 4 (citing *Curtis* col. 5, l. 46 – col. 6, l. 6, col. 6, ll. 30 – 42, and col. 7, ll. 33 – 56). The Examiner further relies on Yokote to teach or suggest adding elements to the best fit environment to match the requirements of the second program, unless the best fit environment matches the requirements of the second program. *See* Ans. 4 – 5 (citing *Yokote* col. 7, ll. 6 – 31).

Appellants argue that “Curtis teaches determining if a reusable object management environment (OME) is available [which] is not the same as determining whether the creation of a new environment is a best

¹ The Examiner’s 35 U.S.C. § 101 rejection of claims 9 and 10 and the Examiner’s 35 U.S.C. § 103(a) rejection of claims 7, 8, and 11 – 18 are withdrawn. Ans. 3.

response.” App. Br. 9. However, the Examiner correctly notes that “Curtis teaches determining whether or not the task can utilize a reusable OME, wherein *if a reusable OME cannot be used, an environment is started.*” Ans. 9 (emphasis added); *see also Curtis* Fig. 4. Appellants do not convincingly distinguish between (1) making a determination whether creating of a new environment is a best response and (2) making a determining whether using a reusable environment is a best response (i.e., because the task can use a reusable OME). If creating a new environment is the best response, then using a reusable environment is not the best response, and visa-versa. Both determinations, which provide the same information, are therefore functionally equivalent.

Appellants contend that the Examiner erred because “[s]tarting a transitory OME is not the same as creating a new environment.” App. Br. 9. However, Appellants do not convincingly distinguish between creating a new environment and starting a transitory object management environment (OME).

Appellants argue that Curtis does not teach “responsive to a determination that creating a new environment is not the best response, testing the pool for a best fit environment.” App. Br. 10. However, the Specification does not clearly define “testing for a best fit environment,” which is broadly described to include “other possible criteria [that] will be evident to those skilled in the art.” Reply Br. 6; *see also Spec.* 11, ll. 14 – 15. Therefore, we agree with the Examiner that a broad, but reasonable interpretation of “testing the pool for a best fit environment” encompasses selecting the first inactive OME from a pool. *See Ans.* 10; *see also Curtis* col. 7, ll. 33 – 56 and Fig. 5B. Curtis illustrates this selection as part of a

method for connecting a reusable OME to a task, which is performed when using a reusable OME is the best response (i.e., creating a new environment is not the best response). *See Curtis* col. 6, ll. 43 – 49 and Fig. 4. Therefore, Curtis teaches or suggests responsive to a determination that creating a new environment is not the best response, testing the pool for a best fit environment.

Appellants also argue that “Yokote [does] not teach incrementally sending executing environment objects to the execution environment to be added to the environment and thereby continu[ing] executing the downloaded application.” App. Br. 11 – 12. However, Appellants do not convincingly distinguish between “adding elements to the best fit environment” and Yokote’s “downloading [an] . . . execution environment in units of objects or portions therefore . . . as necessary rather than downloading at one time.” *Yokote* col. 7, ll. 15 – 19.

The Examiner further relies on Curtis to teach “wherein at least one least recently used of the first, new and best fit environments is eligible to be deleted,” as recited in claim 5. Ans. 6 (citing *Curtis* col. 6, ll. 7 – 27 and col. 8, ll. 36 – 49). Appellants argue that Curtis merely “teaches the possibility of an OME being discarded as well as the deletion of a reference to an OME.” App. Br. 13. However, the Examiner correctly notes that Curtis teaches or suggests a pool with only a single OME in it, eligible to be deleted. *See* Ans. 12 – 13. That single OME would be the least recently used OME by definition. *Id.* Therefore, Curtis teaches or suggest wherein at least one least recently used of the first, new, and best fit environments is eligible to be deleted.

The Examiner further relies on Yokote to teach or suggest “wherein the [added] elements are parameters of at least one of the first, the new and the best fit environments,” as recited in claim 6. *See* Ans. 7 and 13.

Appellants argue that Yokote fails to teach or suggest “that the elements added to the best fit environment are parameters.” App. Br. 14; *see also* Reply Br. 11 – 12. However, Appellants do not convincingly distinguish between downloaded objects that can expand the object of a client, as taught by Yokote, and parameters for an environment. *See Yokote* col. 9, ll. 40 – 41.

Appellants also argue that the Examiner has not provided “appropriate motivation” for modifying Curtis with Yokote. *See* App. Br. 17 – 22; *see also* Reply Br. 12 – 18. However, the Examiner has provided a reason, with a rational underpinning, why it would have been obvious to an artisan of ordinary skill to combine the teachings and suggestions of Curtis and Yokote. *See* Ans. 5.

Accordingly, we sustain the Examiner’s rejections of claim 1, 5, and 6, and dependent claims 2 – 4, 9, and 10, which are not argued separately with specificity. *See* App. Br. 13.

DECISION

The Examiner’s decision to reject claims 1 – 6, 9, and 10 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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ELD